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RICHARD W. NAGEL  
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2017 APR 21 PM 1:24

U.S. DISTRICT COURT  
SOUTHERN DIST OHIO  
WEST DIV CINCINNATI

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MICHAEL VIRGE  
PETITIONER

V.  
UNITED STATES OF  
AMERICA

CASE NO. 1:17-CR-076-2  
1:20-CV-00200  
JUDGE BARRETT  
PETITIONER RESPONSE TO  
GOVERNMENT RESPONSE TO  
2255 MOTION

HISTORY OF CASE. ARGUMENT

AS SAID MY ORIGINAL CHARGE CHARGED ME  
WITH SERIOUSLY BODILY INJURY. I HAD MY COUNSEL  
SET A TRIAL DATE THEN THE GOVERNMENT  
CAME WITH A PLEA DISMISSING THE SERIOUSLY  
BODILY INJURY. I ACCEPTED THE PLEA. NOT  
ONCE DID MY COUNSEL EXPLAIN TO ME UPON  
TAKING THE PLEA WHAT THE BIC MEANT  
OR THAT I WAS STILL BEING CHARGED WITH  
THE BODILY INJURY. THE OFFENSE LEVEL  
38 IS FOR THE SERIOUSLY INJURY STRUCTURE.  
MY COUNSEL SHOULD HAVE GOTTEN ME

REMOVED FROM THAT GUIDELINE ONCE IT WAS DISMISSED, FURTHERMORE, WHEN SEARCHING SERIOUSLY BODILY INJURY, A PERSON MUST HAVE BODY PARTS IMPAIRED, ORGAN FAILURE, DISFUNCTIONAL IMPAIRMENT OF SOME SORT. THE VICTIM HAD NONE. SHE ADMITTED TO BEING SUICIDAL AND NO LONGER WANTING TO LIVE. SHE WAS NOT HOSPITALIZED IN FACT SHE WAS SENT TO A PSYCHIATRIC WARD THE SAME DAY.

#### STANDARDS OF REVIEW ARGUMENT.

THE GOVERNMENT STATED THAT COUNSEL DID AN ADMIRABLE JOB IN WORKING OUT A AGREEMENT. COUNSEL DID NO WORKING OUT ON THE CASE. COUNSEL ALLOWED THE GOVERNMENT TO DO AS THEY PLEASE. I AM STILL SERVING A MANDATORY SENTENCE

GIVEN THAT I WAS SENTENCED FOR THE DRUGS THE GOVERNMENT AND COURT UTILIZED AN UNCHARGED CONDUCT TO ENHANCE ME.

A RECENT SUPREME <sup>COURT</sup> ~~COURT~~ DECISION IN NELSON V. COLORADO, 137 S. CT 1249 (2017) PROVIDES A LEGAL FOUNDATION FOR REINING

IN THE INCLUSION OF ACQUITTED CONDUCT, DISMISSED CHARGES AND UNCHARGED CONDUCT WITHIN RELEVANT CONDUCT. THE SUPREME COURT HELD THAT BY INCLUDING THOSE NON-CHARGED OFFENSE AT SENTENCING VIOLATED DUE PROCESS. THERE IS NO RECORD TO SHOW I WOULD HAVE DONE THINGS DIFFERENT BECAUSE I WAS SWAYED AWAY FROM GOING TO TRIAL BY BELIEVING THE CHARGE WAS BEING DISMISSED. ONCE THE GOVERNMENT DISMISSED THE CHARGE THERE SHOULD OF NOT BEEN STIPULATIONS ALLOWED THAT KEEP THE GUIDELINE THE SAME.

CLAIM NUMBER ONE.

THE PLEA AGREEMENT THAT I RECEIVED ON JUNE 27, 2018 FROM MY COUNSEL WAS BEFORE THE GOVERNMENT AGREED TO DISMISS THE SERIOUSLY BODILY INJURY. THE PLEA AGREEMENT I RECEIVED ON AUGUST 3, 2018 IS CHARGING ME WITH THE DRUG TRAFFICKING. MY COUNSEL DIDNT EXPLAIN TO ME THE (B)(1)(C) STRUCTURE OR WHAT IT MEANT. BEING UNEDUCATED AND LACKING KNOWLEDGE WHEN LOOKING AT THIS PLEA I ASSUMED IT WAS FOR DRUGS

COUNSEL NEVER EXPOSED TO ME THE  
(B) (1) (C) WAS THE CONDUCT OF A CHARGE  
THAT WAS BEING DISMISSED. MY PLEA WAS  
SIGNED WITH ME THINKING ONE THING AND  
ANOTHER HAPPENED WHICH MAKES IT  
INVOLUNTARY. THE ELEMENT OF THE CASE  
OR PLEA WAS <sup>NEVER</sup> CLEAR. COUNSEL ADVISED ME  
THAT THE STATEMENT OF FACTS HAD TO BE  
THAT WAY BECAUSE THE GOVERNMENT WILL  
NOT CHANGE IT. THE STATEMENT OF FACTS  
ALSO STATES I HAD NOTHING TO DO WITH  
THE SERIOUSLY BODILY INJURY. I WAS INVOLVED  
IN ONE SALE. I COULD ONLY BELIEVE WHAT  
MY COUNSEL TELLS ME. UPON SENTENCING  
IS WHEN I REALIZED WHAT I WAS BEING  
TOLD WAS NOT TRUE. MY COUNSEL ADVISED  
ME WE WAS FIGHTING FOR TIME SERVED.  
THEN THE DAY OF COURT THINGS CHANGED.

I WOULD NOT AGREED TO BEING ON THIS LEVEL  
IF MY COUNSEL WOULD OF FULLY EXPLAINED  
TO ME THAT EVEN THOUGH THE CHARGE WAS  
DISMISSED I AM STILL FACING THE TIME FOR  
IT. THE STATEMENT OF FACTS STATES THAT  
THE DRUGS DONALD HOPE GAVE THE VICTIM

CAUSED HER TO OVERDOSE. THEN EVIDENCE CAME FORWARD SHOWING THAT THE VICTIM INTENTIONALLY CAUSED HERSELF TO OVERDOSE. NOT BECAUSE THE DRUG WAS LACED WITH WITH ANYTHING. DEATH OR INJURY DID NOT OCCUR. THE PLEA DID NOT BENEFIT ME I RATHER BEEN TOLD THE TRUTH AND WENT TO TRIAL.

## CLAIM NUMBER TWO: ARGUMENT

COUNSEL FAILED TO INVESTIGATE THE ELEMENTS OF THE CASE. I DO NOT IN NO WAY WANT TO ATTACK THE VICTIM IN THIS CASE.

IN SUPREME COURT CASES (BURRAGE V. US 134 S. CT 881 (2014) RAGLAND V. US 784 F. 3d 1213 (2015) US V FORD, 750 F.3d 952 (2014) US V. SALYERS, 661 FED. APPX. 862 (2016)

THE SUPREME COURT HELD THAT AT LEAST WHERE USE OF THE DRUG DISTRIBUTED BY THE DEFENDANT IS NOT AN INDEPENDENTLY SUFFICIENT CAUSE OF VICTIMS DEATH OR SERIOUSLY BODILY INJURY, A DEFENDANT CANNOT BE LIABLE



UNDER THE PENALTY ENHANCEMENT PROVISION OF CONTROLLED SUBSTANCE ACT APPLICABLE WHEN DEATH OR A SERIOUSLY BODILY INJURY RESULT FROM USE OF DISTRIBUTED SUBSTANCE UNLESS SUCH USE IS A "BUT FOR CAUSE."

THERE IS NO EVIDENCE IN THIS CASE AS TO WHAT DRUG WAS THE INDEPENDENTLY SUFFICIENT CAUSE OF OVERDOSE, WHICH IS REQUIRED BY THE SUPREME COURT. BLOOD SAMPLES, URINE SAMPLES, AND OR A TOXICOLOGY REPORT ARE THE REQUIREMENTS OF THE INDEPENDENTLY SUFFICIENT CAUSE, UNDER THE SUPREME COURT. LAW.

MY COUNSEL DID NOT INVESTIGATE NOTHING CONCERNING THE DRUGS INVOLVED. THE VICTIM TESTED NEGATIVE FOR COCAINE BUT HEROIN DRUGS TESTED POSITIVE FOR THE DRUG. HOWEVER THIS WAS NOT EXPLAINED TO ME AS THE GOVERNMENT STATED.

THE VICTIM WAS SUICIDAL SO JUST A SIMPLE DRUG SCREEN WILL NOT DETECT ALL DRUGS THAT COULD BE IN THE VICTIM SYSTEM.

MY COUNSEL ONCE TOLD ME ITS ONLY SERIOUSLY BODILY INJURY BECAUSE THE VICTIM WAS GIVEN NARCAN. I BELIEVED EVERYTHING COUNSEL TOLD ME.

### CLAIM NUMBER THREE: ARGUMENT

MY CHARGE DOES NOT POSE VIOLENCE NOR DOES IT STATES ANYTHING ABOUT HARM OR BODILY INJURY OCCURED. THATS ONLY WHAT WAS KEPT IN MY STATEMENT OF FACTS. I WAS TOLD BY MY CASE MANAGER THAT I WAS ELIGIBLE FOR THE FIRST STEP ACT. I CANT SHOW THE POLICY BECAUSE THE PRISON IS LOCKDOWN AND I CAN NOT GO TO THE LAW LIBRARY. MY CHARGE SAYS I DISTRIBUTED DRUGS ONLY. AGAIN I DIDNT ACCEPT THE PLEA BASED ON THE TRUTH BEING TOLD. I ADMITTED HOPE DISTRIBUTED THE DRUGS. NOT MYSELF. I SHOULD BE GIVEN A MINOR ROLE AND SAFETY VALVE. I REQUESTED COUNSEL WITH HELP OF THIS.

### CONCLUSION.

MY COUNSEL MADE MYRAIDS OF MISTAKES HE ALLOWED ME TO GO INTO A PLEA WITHOUT INVESTIGATING THE ELEMENTS OF THE CASE. I WAS LEAD WRONG. IN OPEN COURT I ONLY AGREED TO WHAT MY COUNSEL TOLD ME. I ASK THE COURTS TO ALLOW

ME TO HAVE A EVIDENTRY HEARING AND  
LET EVIDENCE BE SHOWN.

SERIOUSLY BODILY INJURY AND THE SENTENCE  
ENHANCEMENT PROVISION SHOULD BE STRICKEN  
FROM MY INDICTMENT. COURTS HAVE LONG  
HELD THAT THE STATUE IS VOID FOR VAGUENESS  
UNDER THE FIFTH AMENDMENT DUE PROCESS  
CLAUSE. I ALSO HAVE PHONE CALLS SHOWING  
MY COUNSEL WAS STILL GIVING ME FALSE  
INFORMATION AFTER I WAS SENTENCED.

Respectfully Submitted

DATE JULY 13, 2020

Meah Virge

Reg NO : 76968061

Hazelton Prison

P.O BOX 3000

Bruceston Mills, WV

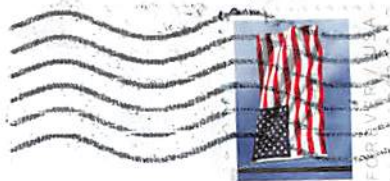
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